

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE ) Docket No. 13 C 9116  
ATHLETIC ASSOCIATION STUDENT- )  
ATHLETE CONCUSSION INJURY ) Chicago, Illinois  
LITIGATION, ) April 14, 2014  
 ) 3:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

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1 (Proceedings had in open court:)

2 THE CLERK: 13 C 9116, NCAA Student Athlete Concussion  
3 Injury Litigation, for motion hearing.

4 MS. FEGAN: Good afternoon, your Honor. Elizabeth  
5 Fegan from Hagens Berman on behalf of the Arrington plaintiffs.  
6 And on the phone is my managing partner, Steve Berman, from  
7 Hagens Berman also.

8 MR. SIPRUT: Good afternoon, your Honor. Joe Siprut  
9 from Siprut PC also for the Arrington plaintiffs.

10 MR. LEWIS: Good afternoon, your Honor. Richard Lewis  
11 for the Walker plaintiffs.

12 MS. CARROLL: Katrina Carroll also for the Walker  
13 plaintiffs.

14 MR. GIBBS: Good afternoon, your Honor. Bill Gibbs  
15 from Corboy & Demetrio on behalf of the Wolf plaintiffs.

16 MR. MESTER: Good afternoon, your Honor. Mark Mester  
17 on behalf of the NCAA.

18 MS. SPELLMAN: Johanna Spellman on behalf of the  
19 defendant NCAA.

20 MR. BALBANIAN: Good afternoon, your Honor. Rafey  
21 Balbanian on behalf of plaintiff intervenor Nichols.

22 THE COURT: Okay. Is there anyone else we have on the  
23 phone?

24 MR. ZIMMERMAN: Yes, your Honor. This is Charles  
25 Zimmerman, here for the Walker plaintiffs with Rich Lewis. I

1 am with the law firm of Zimmerman Reed in Minneapolis.

2 THE COURT: Can you state that a little bit more  
3 clearly and slowly please.

4 MR. ZIMMERMAN: I beg your pardon. My name is Charles  
5 Zimmerman. I am here on behalf of the Walker plaintiffs. I am  
6 co-counsel with Rich Lewis of the Hausfeld firm, who's in the  
7 courtroom today. And I am with the law firm of Zimmerman Reed  
8 in Minneapolis.

9 MR. STEPHENS: Hi, Judge. This is Matt Stephens. I  
10 am attorney for Ray Hudson, plaintiff, our of Birmingham,  
11 Alabama.

12 MR. ZAMORA: Your Honor, this is Mark Zamora,  
13 Z-a-m-o-r-a. And I am counsel for the Caldwell plaintiffs.

14 MR. STUCKEY: Shawn Stuckey with the law firm of Zelle  
15 Hofmann Voelbel & Mason. I'm counsel for the Walker  
16 plaintiffs.

17 MR. BERG: Your Honor, this is Marc Berg, M-a-r-c,  
18 B-e-r-g. I represent the Morgan plaintiffs. I am calling from  
19 Minneapolis also.

20 MR. RADER: Judge, this Mike Rader calling from Kansas  
21 City on behalf of the Powell plaintiffs.

22 THE COURT: Anyone else?

23 MR. DUGAN: Good afternoon, Judge. This is James  
24 Dugan, with the Dugan law firm in New Orleans on behalf of the  
25 Durocher plaintiffs.

1           MR. PORTER: Your Honor, Marwan Porter from Stuart,  
2 Florida, on behalf of the Caldwell plaintiffs.

3           MR. MABRA: Your Honor, Ronnie Mabra from Atlanta,  
4 Georgia, on behalf of the Caldwell?

5           THE COURT: Can you spell your name please?

6           MR. MABRA: Yes, last name, M as in Mary, A as in  
7 Adam, B as in boy, r-a.

8           MS. PAVA: Your Honor, this is Mindy Pava, P-a-v-a,  
9 co-counsel for the Walker plaintiffs, along with Richard Lewis,  
10 who's currently in the courtroom.

11          THE COURT: Okay. Anyone else on the phone we didn't  
12 get?

13          MS. TOOPS: Yes, your Honor. This is Lynn Toops,  
14 T-o-o-p-s, co-counsel for the Durocher plaintiffs here in  
15 Indianapolis.

16          THE COURT: Great. Anyone else? All right. Good  
17 afternoon, counsel.

18               I have with me Magistrate Judge Brown. Magistrate  
19 Brown will be supervising, presiding over, discovery in this  
20 case. So I thought it would be best for her to be here for  
21 this hearing, and for everyone to get to know her as well.

22               So we are here on the medical monitoring plaintiffs  
23 second agreed motion for extension of dates set in case  
24 management order No. 1, as amended. I have reviewed the motion  
25 as well as the response filed by the Nichols attorneys, who

1 don't object to the relief that's requested but wanted to  
2 apprize me of certain developments.

3           The reason I wanted to have this status was, No. 1, I  
4 haven't seen you all in a while. And really it was just to get  
5 a sense of exactly what was going on and what was taking so  
6 long in these discussions that the plaintiffs have been having.  
7 Now, I recognize that some of those discussions may be subject  
8 to some sort of privilege, and plaintiffs may not want to  
9 disclose some of those discussions because of some sort of  
10 privilege. And I am very -- I understand that. But I wanted  
11 to get kind of in broad strokes and as much as possible the  
12 status of those discussions.

13           MS. FEGAN: Your Honor --

14           MR. BERMAN: Your Honor, this is Steve Berman. I  
15 thank you. If it's okay, I'll lead off for the Arrington  
16 plaintiffs.

17           THE COURT: That's fine, Mr. Berman.

18           MR. BERMAN: Thank you for accommodating us by phone  
19 given it's the Jewish holiday. It's very important to some of  
20 us. Appreciate that.

21           I know it's been taking a long time and maybe longer  
22 than your Honor wants. But I wanted first tell you what we  
23 think is the importance of what's happening here and then  
24 explain what we've been doing.

25           If this settlement is proposed to the Court, without



1 going into details that would violate 408, it has two broad  
2 principles: One, that there will be medical monitoring for any  
3 student athlete that's ever played any sport in every state,  
4 and that that medical monitoring will go forward for a period  
5 of 40 or 50 years. That's, let's say, point one of the  
6 settlement.

7 Point two of the settlement is that there will be a  
8 change in the return-to-play practices in all NCAA institutions  
9 involving contact sports, the idea being these changes will  
10 help prevent concussions and will help assist in the proper  
11 treatment of concussions.

12 So when we are talking about these concepts that  
13 affect so many athletes over such a broad period of time, we  
14 think it's important that we get it right to the extent humanly  
15 possible, and that to the extent humanly possible we work we  
16 other lawyers who are interested in this, for example the  
17 Walker plaintiffs and all the lawyers who introduced themselves  
18 on the phone, to understand what their concerns and issues are,  
19 to come to agreement on those or not, and to air those out with  
20 the NCAA.

21 And because of the kind of complicated nature of  
22 medical monitoring and the length of time -- so we have to deal  
23 with symptoms that younger athletes may be experiencing as well  
24 as symptoms older athletes may experience when they are in  
25 their 40s and 50s. There has been a constant dialogue back and

1 forth between various experts on these issues. That is going  
2 slower than we wanted. But it -- it's not from lack of effort.  
3 There has been a lot of effort on everyone's part here.

4 And I think where we are is that we think it's going  
5 to take us another 45 days to be in a position to tell the  
6 Court that we have a motion for preliminary approval we want to  
7 present and whether or not that motion is opposed by any or  
8 certain groups that have also filed cases. That is kind of  
9 where we are.

10 If you have questions for me, your Honor, I'll be glad  
11 to answer them.

12 THE COURT: Well, let's allow other counsel to have a  
13 say as well.

14 Mr. Lewis?

15 MR. LEWIS: Yes, your Honor. Richard Lewis for the  
16 Walker plaintiffs.

17 Your Honor, from our prior hearing, the Court  
18 understands that -- that we are primarily interested in making  
19 sure that the medical monitoring relief responds to the older  
20 former college football players, who are at risk from mid to  
21 late life behavioral and cognitive brain injuries from playing  
22 college sports. And it's that subject that our expert, Dr.  
23 Stern from Boston University, has conferred with one of the  
24 Arrington medical consultants to make sure that the relief  
25 fully responds to the risk those older individuals face. And

1 it has taken us more time than we anticipated.

2 It's very detailed discussions about the scope of  
3 relief, about the type of screening, about the type of medical  
4 exams that will be provided. And we've made significant  
5 progress on that issue in terms of reaching consensus with  
6 Arrington and their counsel, that that type of relief needs to  
7 be part of this protocol.

8 And we haven't reached the stage now where we take  
9 that back to the NCAA. But we are very close to do that. We  
10 have made very good progress on the details of medical  
11 monitoring. There are other important issues that we haven't  
12 resolved that we're still working on. And that's where we are  
13 as of today, your Honor.

14 THE COURT: Okay. Can I hear from someone who  
15 represents the Nichols plaintiffs?

16 MR. BALBANIAN: Yes, your Honor. We coordinated a  
17 meeting with those firms that are interested in pursuing the  
18 personal injury aspect of this case. And we have, I believe,  
19 made great progress in structuring that -- that group at this  
20 point. It's not -- hasn't been finalized at this point.

21 And we have been speaking to the NCAA with respect to  
22 our concerns in the settlement and making sure that -- that our  
23 clients' personal injury issues are either accounted for in the  
24 settlement or not -- not adversely affected by the settlement.  
25 We made good progress with Mr. Mester and his colleagues as

1 well.

2 I am not going to reiterate what we put in our papers.  
3 We've had a little bit of frustration communicating with Mr.  
4 Berman's office with respect to those issues. But we don't  
5 have any objection to the motion for extension.

6 THE COURT: Hear from the NCAA?

7 MR. MESTER: Yes, your Honor. Just two items. One, I  
8 want to apprise you of one of the moving parts that we alluded  
9 to the last time we were here in February, and that's the  
10 insurance piece. As I -- as we advised you at that time, we  
11 had invited the insurance carriers to that final mediation  
12 session with Judge Phillips. That was in February.

13 Since that time, we've had three additional mediation  
14 sessions with the carriers with a different mediator at the  
15 insistence of the carriers and made good progress. But to  
16 reiterate what we said before, it is a fairly complex coverage  
17 map. There is 11 different carriers represented by 12  
18 different law firms and over a hundred and five different  
19 policies that span a couple of decade periods. It's -- it's  
20 more complicated than some.

21 But we -- our most recent mediation was April 2 in  
22 Dallas. We made some good progress. So we continue to  
23 communicate with the participating carriers, hope to reach a  
24 resolution on that also in the time frame that Mr. Berman  
25 alluded to.

1           The other clarification I wanted to make, your Honor,  
2 was, in terms of the return-to-play guidelines, that would  
3 really be a reaffirmation of guidelines that were put into  
4 place a couple of years ago. But I'm not -- I'm not  
5 challenging Mr. Berman's characterization. I just want to make  
6 clear, those are guidelines that have been in place a couple  
7 years.

8           THE COURT: Okay. Anyone else wants to pipe up at  
9 this point?

10           The concern I have with regard to where this case  
11 is -- well, let me give you the good news. The good news is  
12 that I am very encouraged by the efforts that the parties are  
13 making to try to work together with and to confer with one  
14 another and to come to some sort of agreement on how this case,  
15 how the settlement, would move forward.

16           The last time we were all here, I would say that there  
17 were a lot of splintered pieces. It's good to see that there  
18 is starting to be some cohesion, particularly among the  
19 different plaintiffs. I know that there is a lot of different  
20 interests and a lot of different pieces at play. And you all  
21 have to represent your particular clients and the people that  
22 you represent. And I understand that. And I'm encouraged by  
23 those discussions. I want to encourage those discussions to  
24 continue.

25           Mr. Berman, the concern that I have -- and here is the

1 bad news, although it's not really too bad. The concern that I  
2 have is, the tendency for the plaintiffs, at least from what  
3 I'm hearing, to want to have everything tidy with a nice bow in  
4 place and then offering everything to the Court in one package,  
5 No. 1, just based upon my experience in cases like this, I  
6 don't think that's really ever going to happen. I think that  
7 while most of the issues probably the plaintiffs will come to  
8 some agreement with the NCAA, there are bound to be some issues  
9 and objections and things of that sort at some point in this  
10 process. Okay?

11 Second of all, I think that waiting for that time to  
12 come will really enure to the fact that this -- it will delay  
13 this case moving forward in terms of case management and  
14 discovery. And so while I will grant the motion that is  
15 pending and that's up today, and I will enter the dates that  
16 are requested, I am not inclined to change those dates beyond  
17 the dates that are set forth in the motion, because I believe  
18 that it would be in the best interest of trying to resolve this  
19 case for the case to go forward, even if it does have to be on  
20 two separate tracks. If it has to be on a settlement track and  
21 litigation track, well, then so be it.

22 But I think that waiting until --

23 (Brief interruption.)

24 MR. SIPRUT: My apologies. New phone.

25 THE COURT: -- waiting until any further than beyond

1 May or mid-May, to get this case on track, to get discovery  
2 going and see if there is any need for additional discovery,  
3 and to set a specific case management order that will set forth  
4 litigation time frame for this case in a manner in which this  
5 case will be able to be resolved, would be really in everyone's  
6 interest. And so certainly that's what I intend to do.

7           So that said, the motion is granted. Again, the dates  
8 will be entered. But just be advised that this will be the  
9 last extension absent some extraordinary circumstances. I'll  
10 never say never. But barring some extraordinary circumstances,  
11 these dates that I entered will not change. Okay?

12           With regard to the April 24 status hearing, I will go  
13 ahead and strike that. And what I would suggest is, given  
14 everyone's different calendars and what not, I will in the  
15 order provide a couple of alternatives for dates for the next  
16 status hearing. I expect all the attorneys to meet and confer.  
17 And then you can call Ms. Acevedo and provide the date upon  
18 which everyone agrees for the next status hearing.

19           Okay. At this point is there anything else that we  
20 need to address today?

21           MR. MESTER: No, your Honor.

22           THE COURT: All right. As far as the next status  
23 hearing goes, again, out-of-town counsel do have leave to  
24 participate by telephone if they so choose. If you want to be  
25 here, that's great. The weather is getting better here every

1 day, except for today. But I understand that if you rather  
2 participate by telephone conference, and that's fine.

3 Please let's use the same protocol that we used today.  
4 We find that that really helped us out quite a bit.

5 All right. Very good.

6 MS. FEGAN: Thank you, your Honor.

7 THE COURT: Thank you very much.

8 MR. SIPRUT: Thank you.

9 MR. BERMAN: Thank you, your Honor.

10 (Which were all the proceedings had at the hearing of the  
11 within cause on the day and date hereof.)

12 CERTIFICATE

13 I HEREBY CERTIFY that the foregoing is a true, correct  
14 and complete transcript of the proceedings had at the hearing  
15 of the aforementioned cause on the day and date hereof.

16  
17 /s/Alexandra Roth

4/17/2014

18 \_\_\_\_\_  
19 Official Court Reporter  
20 U.S. District Court  
21 Northern District of Illinois  
22 Eastern Division  
23  
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\_\_\_\_\_  
Date